

§ 1777.10

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise; and

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan as determined by the Director of OFHEO in writing in advance.

Core capital has the same meaning as provided in 12 CFR 1750.2.

Critical capital level means the amount of core capital that is equal to the sum of one half of the amount determined under 12 CFR 1750.4(a)(1) and five-ninths of the amounts determined under 12 CFR 1750.4(a)(2) through 1750.4(a)(7).

Enterprise means the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Minimum capital level means the minimum amount of core capital specified for an Enterprise pursuant to section 1362 of the 1992 Act (12 U.S.C. 4612), as determined under 12 CFR 1750.4.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Risk-based capital level means the amount of total capital specified for an Enterprise pursuant to section 1361 of the 1992 Act (12 U.S.C. 4611), as determined under OFHEO's regulations implementing section 1361.

Total capital has the same meaning as provided at 12 CFR 1750.11(n).

12 CFR Ch. XVII (1–1–06 Edition)

Subpart A—Prompt Supervisory Response

§ 1777.10 Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's publicly reported net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(c) An Enterprise's publicly reported net interest margin (NIM) for the most recent quarter is less than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(d) For single-family mortgage loans owned or securities by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion of such loans in the most recent quarter has increased more than one percentage point compared to the lowest proportion of such loans in any of the prior four quarters; or

(e) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11 Supervisory response.

(a) *Level I supervisory response*—(1) *Supervisory letter*. Not later than five business days after OFHEO determines that a development enumerated in § 1777.10 has transpired, OFHEO shall deliver a